

**COMMONWEALTH OF KENTUCKY
KENTUCKY BOARD OF TAX APPEALS
FILE NO. KO4-S-37**

JEAN ACTON

APPELLANT

V.

ORDER NO. K-19306

**OLDHAM COUNTY PROPERTY
VALUATION ADMINISTRATOR**

APPELLEE

The Kentucky Board of Tax Appeals has delegated authority to a hearing officer pursuant to KRS 13B.030. The hearing officer entered a recommended order in compliance with the provision of KRS 13B.110. The Appellant filed exceptions to the recommended order. The Board has reviewed the record, the recommended order and the exceptions.

The Kentucky Board of Tax Appeals conducted a hearing in this matter on December 13, 2004 and makes the following findings of fact, conclusions of law and final disposition in compliance with the provisions of KRS 13B.120.

FINDINGS OF FACT

This assessment appeal is for real property located at Almeida Estates, West Highway 42, Lot 37-04-00-14, LaGrange, Kentucky. The Oldham County Property Valuation Administrator assessed the property at \$55,000.00 . The taxpayer or Appellant values the property at \$35,000.00 . The Oldham County Board of Assessment Appeals valued the property at \$55,000.00 . The Appellants filed a timely appeal from the local board with the Kentucky Board of Tax Appeals.

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The Appellant offered the following evidence in support of Appellant's appeal: Ms. Acton advised the hearing officer the tax assessment went from \$30,000.00 to \$35,000.00 in 2001. Ms. Acton states her appeal involves "an undeveloped, very poor piece of undeveloped land". She declares the land tract possesses a "great big drainage ravine going down through the middle of it". The land was originally purchased in 1984 and has become "a tax liability" according to Ms. Acton.

The size of the lot is 4.3 acres and is described by the appellant as being "rocky and rolling" with no form of infrastructure on the property. Ms. Acton states she has been involved in "at least ten real estate matters out here" and in her 25-year practice of real estate law she has not witnessed "a \$12,790 price tag per acre". She believes her home is located next to an adjacent lot with an LG&E tower and located near a "modest little house that is used for a dog kennel".

The land tract is located in Almeida Estates and the size of the lot is similar to most lots in the subdivision. Ms. Acton did not provide any pictures, but reiterated the "huge, big ravine in it". This ravine makes the tract impossible to develop and Ms. Acton testifies she is willing to give the property away since a contractor advised against building because of the ravine. Ms. Acton offered her comparables as three tracts sold on Ridge Road and another tract sold on Sheehan Drive in Buckner.

The PVA argues that the comparables Ms. Acton used for evidence were located in the "poorest subdivision in the county" adjacent to the Henry County-Oldham County border. Mr. Charles Woolum, a state certified appraiser, testified the \$55,000.00 is "probably on the low side for that area". Mr. Woolum offered comparables, which are, located a half-mile to mile distance from the Ms. Acton's property. He also testified the Acton property was near electric and water

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for utilities and the property is “buildable” based on his personal observations from the front of the property. All of the lots in the area are on septic tanks and this is an “acceptable practice” in Oldham County. Mr. Woolum differentiates his comparables with Ms. Acton by noting Ms. Acton’s comparables are “probably four to five miles away” from the appealed property and the “condition of the roads”. Additionally, Mr. Woolum notes Ms. Acton’s lot deed restrictions allows her to divide the property into two lots which are currently selling “for anywhere from \$30,000.00 to \$40,000.00 a piece”.

Finally, Mr. Woolum testifies Almeida Estates is “probably 40 lots” and “probably 30” have been developed. This subdivision and its assessed properties reflect the tremendous growth occurring in Oldham County. Mr. Fendley representing the Oldham County PVA did not agree with Ms. Acton’s location of the “tower”.

Mr. Beam advised both parties a geographical map showing the comparable lots and location of the property would be helpful to their respective viewpoints.

It is the finding of this hearing that the Appellant did not sustain her/its burden of proof regarding her challenge to the final order of the Oldham County Board of Assessment Appeals.

Based upon the evidence in the record, it is the finding through its hearing officer, Bill Beam, Jr., the fair cash value of the property in question as of January 1, 2004 is \$55,000.00.

CONCLUSIONS OF LAW

The Kentucky Board of Tax Appeals is vested with exclusive jurisdiction to hear and determine appeals from final rulings, orders and determinations of the Oldham County Board of

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Assessment Appeals pursuant to KRS 131.340(1).

The function of the Board is not simply to review the action of the Oldham County Board of Assessment Appeals, but to try anew the issues as presented. *Jefferson County Property Valuation Administrator v. Oxford Properties, Inc.*, Ky.App., 726 S.W.2d 317, 319 (1987). See KRS 131.340(1).

Section 172 of the Kentucky Constitution mandates that “all property shall be assessed for taxation at its fair cash value, estimated at the price it would bring a fair voluntary sale.”

The choice of the most appropriate and reliable approach to valuation is within the prerogative of the Board. *Jefferson County Property Valuation Administrator*, 726 S.W.2d at 319.

Regardless of the manner or method used by the Property Valuation Administrator or the decision of the Kentucky Tax Board of Appeals, the finding of valuation must be at its fair cash value, estimated at the price it would bring at a fair voluntary sale. *Helman v. Kentucky Board of Tax Appeals*, Ky.App., 554 S.W.2d 889 (1977).

As the party proposing that the Kentucky Board of Tax Appeals set aside the decision of the Oldham County Board of Assessment Appeals, the Appellants have the burden of proving a lower value. KRS 13B.090(7).

If the property is sold at or near the assessment date in a fair and voluntary sale, the sale price is usually the best evidence of the property’s fair cash value. *Sears, Roebuck & Company v. Boone County Board of Assessment Appeals*, Ky.App., 715 S.W.2d 888, 889 (1986).

Based upon the facts as established in this hearing, the hearing officer concludes that the

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fair cash value of the subject property as of January 1, 2004 is \$55,000.00.

FINAL ORDER

The Kentucky Board of Tax Appeals has considered the record and the exceptions filed and accept the recommended order of the hearing officer, and adopt it as the Board's final order. Failure to file exceptions to an administrative hearing officer's recommendations after a hearing constitutes a failure to exhaust administrative remedies and precludes appellate review. *Swatzell v. Natural Resources and Environmental Protection Cabinet*, Ky App 962 SW 2nd 866 (1998).

The following information is provided pursuant to the final order requirements of KRS Chapter 13B:

The July 1, 2004 final ruling of the Oldham County Board of Assessment Appeals is to be upheld and the real property be assessed at a fair cash value of \$55,000.00 as of January 1, 2004.

This is a final and appealable order. All final orders of this agency shall be subject to judicial review in accordance with the provisions of KRS Chapter 13B. A party shall institute an appeal by filing a petition in the Circuit Court of venue, as provided in the agency's enabling statutes, within thirty (30) days after the final order of the agency is mailed or delivered by personal service. If venue for appeal is not stated in the enabling statutes, a party may appeal to Franklin Circuit Court or the Circuit Court of the county in which the appealing party resides or operates a place of business. Copies of the petition shall be served by the petitioner upon the agency and all parties of record. The petition shall include the names and addresses of all parties

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to the proceeding and the agency involved, and a statement of the grounds on which the review is requested. The petition shall be accompanied by a copy of the final order.

A party may file a petition for judicial review only after the party has exhausted all administrative remedies available within the agency whose action is being challenged, and within any other agency authorized to exercise administrative review.

A petition for judicial review shall not automatically stay a final order pending the outcome of the review, unless:

- (a) An automatic stay is provided by statute upon appeal or at any point in the administrative proceedings;
- (b) A stay is permitted by the agency and granted upon request; or
- (c) A stay is ordered by the Circuit Court of jurisdiction upon petition.

Within twenty (20) days after service of the petition of appeal, or within further time allowed by the Circuit Court, the Kentucky Board of Tax Appeals shall transmit to the reviewing court the original or a certified copy of the official record of the proceeding under review in compliance with KRS 13B.140(3).

**DATE OF ORDER
AND MAILING: May 4, 2005**

FULL BOARD CONCURRING.

NANCY MITCHELL
CHAIR

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